Additional Argument of Defendants in Error.

SUPREME COURT OF THE UNITED STATES.

JANUARY TERM, 1907.

PEOPLE'S SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

DES MOINES SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

HOME SAVINGS BANK,

PLAINTIFF IN ERROR,

vs.

THE CITY OF DES MOINES AND THE CITY COUNCIL OF SAID CITY AS A BOARD OF REVIEW,

DEFENDANTS IN ERROR.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

W. H. Bremner and M. H. Cohen,
Attorneys for Defendants in Error.

ADDITIONAL ARGUMENT OF DEFENDANTS IN ERROR.

I.

The tax to be levied upon the stock of savings banks under the provisions of Section 1322 of the Code of Iowa is a tax upon the shares of stock and not upon the capital of the bank.

Section 1322 of the Code of Iowa provides in terms that the "*shares of stock* of state and savings banks and loan and trust companies shall be assessed to such banks and loan and trust companies and not to the individual stockholders." The statute, therefore, in terms provides that the payment is upon the shares of stock and not upon the capital of the bank. This is the meaning which the Supreme Court of Iowa has given to this section in the cases at bar, and in the previous decisions of that Court. The proposition that this interpretation is binding upon this Court has been fully argued in the Brief and Argument of the Defendants in Error filed previous to the first submission of these cases.

An assessment upon shares of stock of a corporation is an entirely different thing from an assessment upon the capital of the corporation. In many decisions of this Court this proposition has been asserted, and it would serve no useful purpose to review those decisions. The total value of the shares of stock of a corporation may exceed or it may be less than the total assets of the corporation. Section 1305 of the Code of Iowa as amended by Chapter 30 of the Acts of the Twenty-seventh General Assembly, provides that "All property subject to taxation shall be valued at its actual value which shall be entered opposite each item and shall be assessed at 25 per cent of such actual value. * * * Actual value of property as used in this chapter shall mean its value in the

market in the ordinary course of trade." It is a matter of common knowledge that the actual value of a share of stock in the market sometimes varies to a very considerable extent in the course of a very short period of time, although the assets of the corporation may remain substantially the same. It is this market value of the shares of stock of savings banks which is to be taken as the actual value thereof for assessment under the provisions of Section 1322 of the Iowa Code. This section provides that in determining the value of these shares of stock, the Assessor shall consider statements to be furnished by the corporation and "other information he can obtain." Such other information could only consist of the selling or market value of the stock. It is especially true in the case of banking corporations that the total value of its shares of stock may exceed the total assets of the corporation, for the reason that the earning capacity of bank stock depends to a great extent upon the amount of deposits which the bank is able to secure, and if the amount of deposits is large in proportion to the amount of stock, the earning capacity of the stock is much greater than the earning capacity of stock in a similar corporation with the same amount of capital stock, but with small deposits. We submit that the assessment provided for in Section 1322 of the Code of Iowa is upon the shares of stock of the corporation, the value thereof to be the market value, and that in fixing such value, it is not necessary to deduct the holdings of the bank of United States bonds.

II.

Section 1322 of the Code of Iowa is not within the inhibition of the 14th Amendment to the Constitution of the United States.

It is claimed on behalf of the plaintiffs in error that if the statute requires the bank to pay a tax upon the property of the shareholders without provision for its reimbursement,

the bank is deprived of its property without due process of law, and therefore the law is void. It is to be remembered that the plaintiffs in error are Iowa corporations and that the right of the state to regulate such corporations and to provide the terms upon which they may transact business, rests in the sound discretion of the Legislature of Iowa, subject to such restrictions as may be found in the Constitution of the United States, and the Constitution of the State of Iowa. If there is any restriction at all upon the power of the state to regulate its own corporations in addition to the above, it is that the regulations must not be unreasonable. As was stated in the case of the *National Bank vs. Commonwealth,* 9 Wall., 353, "If the state can not require the bank to pay the tax on the shares of its stock, it must be because of the Constitution of the United States or some act of Congress which forbids it. There is certainly no express provision of the Constitution on the subject." The right of the state to compel the bank to pay a tax levied on the shares is not dependent upon its granting to the bank the express right of recovery back from the shareholder. This proposition was determined in the case of *Corry vs. Mayor and Council of Baltimore,* 196 U. S., 466, 40 L. Addition, 556. In this case, Mr. Justice White, delivering the opinion of the Court, it is said, on page 476 of the opinion: "The principle upheld by the rulings of this Court to which we have referred, concerning the taxation by the states of stock in national banks, is that the sovereignty which creates a corporation has the incidental right to impose reasonable regulations concerning the ownership of stock therein, and that a regulation establishing the situs of stock for the purpose of taxation, *and compelling the corporation to pay the tax on behalf of the shareholder,* is not unreasonable regulation. * * * And we think, moreover, that the authority so possessed by the state carries with it the power to endow the corporation with a right of recovery against the stockholder for the tax which it may have paid on his behalf."

This decision does not make the right of the state to require the bank to pay a tax on behalf of its shareholders, dependent upon the grant of a right of recovery on the part of the bank from the individual shareholder. It holds that the state has the right to require a bank to pay a tax levied against its shares of stock and that such a requirement is a reasonable regulation and the right to grant a recovery to a bank from the shareholder is declared to be a separate and independent right, and it would seem that a requirement on the part of a state that a corporation, which exists by virtue of a grant of the state, should pay the taxes to be assessed by the state against the shares of stock of the corporation, is not an unreasonable regulation and the Constitution of the United States does not prohibit such a regulation.

III.

At the time of the oral argument of these causes, when they were first submitted, a good deal was said upon the question of whether or not the shareholders of savings banks had a right to deduct the amount of their debts from the value of their shares of stock, and it was contended that if they did not have, then the shareholders were denied the equal protection of the law and that, therefore, the statute was in conflict with the Constitution of the United States. Under the Iowa statutes every person is entitled in making up the amount of moneys and credits which he is required to list for taxation, to deduct from the actual value thereof the gross amount of all debts in good faith owing by him,—Section 1311 of the Code of Iowa—and in Section 1309 of the Code the term "credit" is defined as including "every claim or demand due or to become due for money, labor or other valuable thing, every annuity or sum of money receivable at stated periods, and all money or property of any kind secured by deed, title bond, mortgage or otherwise * * *" The Supreme Court

of Iowa in a number of cases has had occasion to pass upon the question of whether the owner of corporation stock, other than stock in state and savings banks, was entitled to deduct from the value thereof his debts; that is as to whether corporation stock was a credit within the definition as laid down in Section 1309 of the Code. In the case of the *First National Bank vs. the City Council of Albia,* 85 Iowa, 736, it laid down the rule that the term "credit" included shares of stock of national banks. This holding was based upon the proposition, however, that to hold otherwise would constitute a discrimination against the holders of shares of stock of national banks forbidden by the act of Congress which authorizes the taxation of such shares.

In the case of *Bridgman vs. City of Keokuk,* 33 N. W., 355, 72 Iowa, 42, the Court held that corporation stock was not a credit from which could be deducted the debts of a stockholder. In the case of *Polk County vs. Kauffman,* decided in 1898, 74 N. W., 8, the Court again held that the valuation of stock can not be offset by indebtedness. None of these cases involved the question of whether stock in savings banks is a credit from which the owner might deduct his debts, and in the case of the *Primghar State Bank vs. Rerick,* 64 N. W., 801, the Court expressly declined to pass upon the question of whether such shares are credits because the question was not necessarily involved in the determination of the cause. So that the question of whether the owner of stock in a savings bank is entitled to deduct from the value thereof his debts is an open question in the State of Iowa, a question upon which our Supreme Court has not passed.

If to hold that such a deduction could not be made would constitute a discrimination against the savings bank shareholder in violation of the provisions of the 14th Amendment, then it is to be presumed that the Supreme Court of Iowa would not so hold.

But however that may be, this question is not in the cases

at bar. No stockholder is a party to these cases, nor is there any stockholder complaining that he was not permitted to deduct his debts from his holdings of stock in the plaintiff banks.

In the case of the *People of the State of New York vs. Reardon,* decided by this Court on the 7th day of January, of this year, Mr. Justice Holmes delivering the opinion, it was said: "But there is a point beyond which this Court does not consider arguments of this sort for the purpose of invalidating the tax laws of a state on constitutional grounds. This limit has been fixed in many cases. It is that unless the party setting up the unconstitutionality of the state law belongs to the class for whose sake the constitutional protection is given, or the class primarily protected, this Court does not listen to his objections, and will not go into imaginary cases, notwithstanding the seeming logic of the position that it must do so, because if, for any reason, or as against any class embraced, the law is unconstitutional, it is void as to all. (Citing cases.) If the law is valid when confined to the class of the party before the court, it may be more or less of a speculation to inquire what exceptions the state court may read into general words, or how far it may sustain an act that partially fails. With regard to taxes, especially, perhaps it might be assumed that the legislature meant them to be valid to whatever extent they could be sustained, or some other peculiar principle might be applied."

There is no express statutory provision in Iowa that debts may not be deducted from the value of savings bank shares of stock, anl it depends upon what interpretation the Supreme Court of Iowa places upon Sections 1309 and 1311 of the Code whenever the question is before it for decision. It has held that shares of national banks were credits from which debts might be deducted and it may apply the same rule to shares

of stock of savings banks, but however that may be this question is not involved in these cases.

Respectfully submitted,

W. H. BREMNER, and
M. H. COHEN,
Attorneys for Defendants in Error.